
(2012) 05 JH CK 0014
In the Jharkhand High Court
Case No : C.W.J.C. No. 1258 of 1999 (R)

Ramesh Chandra Mishra @ Ramesh Kumar Mishra	APPELLANT
Vs	
The Presiding Officer, Labour Court, Ranchi and Another	RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21
Industrial Disputes Act, 1947 — Section 10(1), 22, 25F

Citation : (2012) 3 JCR 533 : (2012) 3 JLJR 183

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Baban Lal, C.S. Pandey, for the Appellant; A.K. Mehta, for the Respondent

Final Decision : Allowed

Judgement

N.N. Tiwari, J

1. The petitioners of both the above writ petitions are aggrieved by the award dated 20.7.1998 rendered by the Presiding Officer, Labour Court, Ranchi in Reference Case No. 15/1993. The petitioner Ramesh Chandra Mishra C.W.J.C No. 1258/1999(R) is aggrieved by a part of the award, whereas the petitioner Krishna Rai C.W.J.C No. 457/2000(R) is aggrieved by the entire award.

2. The brief facts giving rise to the above case are as follows:

(i) The petitioners Ramesh Chandra Mishra and Krishna Roy were appointed as Store Keeper (Grade-III) and Laboratory Boy (Grade-IV) respectively in the Department of Physics, Jagarnath College, Dhurwa in the year 1982.

(ii) The said college is a constituent unit of Ranchi University.

(iii) In the year 1987, an advertisement was published in the newspaper "Ranchi Express" in its edition dated 18.3.1987 under the signature of the Registrar, Ranchi University dated 13.3.1987, whereby the applications were invited for

appointment / preparation of panel in Grade-III and Grade-IV for several constituent colleges of Ranchi University including Jagarnath Nagar College, Dhurwa, Ranchi (Annexure-1).

(iv) The petitioners, who possessed requisite qualification and were working regularly to the full satisfaction of the college authorities, applied for their appointments on the post of Store Keeper and Laboratory Boy.

(v) The Deputy Registrar, Ranchi University issued letter dated 15.1.1988 asking the petitioners to appear before the Interview Board along with the service testimonials, domicile certificate etc. in original in Marwari College, Ranchi on 29.1.1988 (Annexure-2).

(vi) Pursuant to the letter of the Deputy Registrar, Ranchi University dated 15.1.1988, the petitioners appeared before the Interview Board consisting of the then Vice Chancellor, Registrar, other officers and two experts, namely, Sri Indu Dhan and Sri Bahura Eeka besides some other members.

(vii) By Letter No ARU/V.C/4268-69 dated 6.5.1990, the Registrar, Ranchi University informed the Principal of J. N. College, Dhurwa regarding selection / regularization of the services of the petitioners (Annexure-3).

(viii) On receiving the said letter from the Registrar of the Ranchi University, the Principal, J. N. College, Dhurwa issued the letter dated 29.5.1990 to the petitioners communicating regularization of their services with immediate effect by the Vice Chancellor of the Ranchi University (Annexure-4).

(ix) After the said regularization, the petitioners became the regular and permanent employees of the J. N. College, Dhurwa.

(x) However, full salary was not paid to the petitioners and as such they filed representation before the Principal, J. N. College, Dhurwa on 7.12.1990.

(xi) The Principal of the said college forwarded the petitioners' representation for further needful, but the salaries were not paid to the petitioners on the plea that the fund was not made available by the University.

(xii) The petitioners then filed writ petition being CW.J.C No. 764/1991 before the Patna High Court, Ranchi Bench, (as then was) which was disposed of with a direction on the University to make payment of the petitioners' salary which was due since May 1990.

3. In the said case, the University had filed counter affidavit and admitted that the petitioners were working on their respective posts till 2.12.1990, but they were not allowed to work thereafter by oral order of the Principal.

4. In view of the said dispute raised by the respondents, the Patna High Court observed that there is dispute regarding the claim of salary, which cannot be decided in absence of evidence. The Court, thereafter, allowed the petitioners to withdraw the writ petition being C.W.J.C No. 764/1991 and to seek remedy

before the appropriate authority.

5. The petitioners, thereafter, filed representation before the Principal of the said college and the authorities of the Ranchi University and requested to pay their salary, but their representations were not heeded upon.

6. On 23.4.1992, again representations were sent to the Principal, J. N. College, Dhurwa and the Registrar, Ranchi University requesting for redressal of the grievance of the petitioners. But this time also there was no response.

7. The petitioners, thereafter, filed application dated 19.5.1992 before the Assistant Labour Commissioner, Ranchi requesting for conciliation of the dispute.

8. The Assistant Labour Commissioner issued notice to the respondents for the purpose of conciliation. They appeared, conciliation was held, but ultimately failed.

9. The Governor of Bihar, thereafter, referred the dispute to learned Labour Court, Ranchi in exercise of power under Clause (C) of Section 10(1) of the Industrial Disputes Act, 1947. The reference was made by the order of the Governor dated 1.11.1993 to learned Labour Court, Ranchi for adjudication of the dispute in the following terms:

Whether the termination of services of Shri Krishna Roy, Laboratory Boy and Shri Ramesh Chandra Mishra, Store Keeper, Jagarnath College, Dhurwa, Ranchi, is proper? If not, whether they should be reinstated on work or / and should be given compensation?

10. Before learned Labour Court, the respondents contested the petitioners' claim stating, inter alia, that the Jagarnath College, Dhurwa was affiliated to Ranchi University in the year 1972 and it became a constituent college of Ranchi University w.e.f 26.11.1980. The Management of the college rests with the Ranchi University and neither the Principal nor any officer of the college has any authority to appoint any employee, of any category. It was further stated that the reference itself is bad, as the college is not an industry and Ramesh Chandra Mishra and Krishna Rai are not the workmen. The college is imparting education, it does not come within the definition of an "industry" and the provisions of Industrial Disputes Act are not applicable. Even if it is assumed that the said persons were appointed, their appointments were a(sic) Initio void. The order of regularization of the services of the petitioners, issued by the then Vice Chancellor, was in gross violation of the provisions of the Bihar State University Act, 1976. That order was subsequently cancelled by the order of the University dated 2.12.1990. The said persons, thus, did not derive any legitimate right on that regularization order followed by the letter of the Principal. The said persons had earlier filed a writ petition for payment of their salary, but they had withdrawn the said writ petition.

11. The concerned workmen in their written statement - rejoinder refuted the said contentions of the Management and stated, inter alia, that they were duly

appointed employees of J. N. College, Dhurwa, which is a constituent unit of Ranchi University. The petitioner Ramesh Chandra Mishra was working as Store Keeper and the petitioner Krishna Rai was working as Laboratory Boy since 1982. Subsequently, the applications were invited for appointment / regularization in Class-III and IV posts for several constituted colleges of Ranchi University including Jagarnath Nagar College, Dhurwa. The concerned workmen, who had possessed requisite qualification and were working regularly, applied for the posts of Store Keeper and Laboratory Boy respectively. They were called for interview. The petitioners faced interview and thereafter they were selected for their appointments by the Interview Board. The Registrar, thereafter, communicated to the Principal of J. N. College, Dhurwa by letter dated 6.5.1990 that the petitioners were regularized with immediate effect. However, without payment of arrears of salary. Thereafter, the petitioners began to work as permanent and regular employees. Subsequently, when salary was not paid to them, they approached the Patna High Court, Ranchi Bench (as then was) by filing C.W.J.C No. 764/1991, which was ultimately permitted to be withdrawn for pursuing the claim departmentally.

12. Thereafter, they made repeated requests for payment of salary to the Principal and the authorities of the Ranchi University, but it remained unheeded upon. Thereafter, they requested the Assistant Labour Commissioner to intervene in the matter, which ultimately resulted into the said reference. It has been submitted that the termination of the services of the concerned workmen without giving any notice or opportunity of hearing is wholly illegal and unsustainable. The petitioners are entitled to be reinstated with full back wages.

13. Learned Labour Court heard both the parties and on the basis of their pleadings,- framed the following points for determination: (i) Whether reference is maintainable? (ii) Whether termination of the services of the concerned workmen is justified? (iii) Whether the concerned workmen are entitled to any relief?

14. Both the parties led their evidences.

15. On conclusion of the hearing of the said reference, learned Labour Court held that the reference with respect to Krishna Rai was not preceded by demand notice and as such the same is not maintainable. Though his representation dated 7.12.1990 (Ext. 2/A) was brought on record, the same was with respect to payment of wages and there was no averment or whisper regarding his reinstatement.

16. Learned Labour Court, however, found out and held that the termination of services of the concerned workmen is not justified and the same is against the law and in violation of Section 25F of the I. D. Act. Learned Court then proceeded to hold that the concerned workmen were appointed by the authority having no jurisdiction and in view of the provisions of Section 35 of the Bihar University Act, 1976, they are not entitled to get the relief of reinstatement. However,

admittedly the concerned workmen were appointed and working on the respective posts, hence they are entitled for their wages along with notice pay and retrenchment compensation.

17. Learned Labour Court lastly held that the reference with respect to the petitioner Krishna Rai is bad in absence of demand notice and is not maintainable and he is not entitled to any relief. The petitioner Ramesh Chandra Mishra only is entitled to the aforesaid relief.

18. Learned Labour Court, thus, answered the reference in the above terms in the impugned award dated 20.7.1998.

19. In the writ petition, the petitioner Krishna Rai has challenged the part of the award whereby learned Labour Court has held that the reference with respect to Krishna Rai is bad and is not maintainable and he is not entitled to any relief, whereas the petitioner Ramesh Chandra Mishra is aggrieved by the part of the award whereby instead of reinstatement and full back wages, he has been awarded only the wages along with notice pay and retrenchment compensation.

20. Mr. Baban Lal, learned Sr. counsel appearing on behalf of the petitioners in both the writ petitions, submitted that learned Labour Court has erroneously refused the relief to the petitioner Krishna Rai on a hyper technical ground as well as he has committed an error in refusing the relief of reinstatement to the petitioners including Ramesh Chandra Mishra. Learned counsel submitted that once it is held that the termination of the concerned workmen is illegal and unjustified and is in violation of Section 25F of the Industrial Disputes Act, learned Labour Court should have granted the relief of reinstatement with full back wages to the petitioners.

21. Learned counsel submitted that learned Labour Court failed to appreciate that in the conciliation proceeding held before the Assistant Labour Commissioner, the Management had also participated, but the Management did not agree to reinstate the petitioners. No settlement could be arrived at between the parties. On failure, the report was submitted to the appropriate Government and the dispute was referred for adjudication to learned Labour Court.

22. In spite of the said proceeding and participation of the Management before the Assistant Labour Commissioner, in which the concerned workmen demanded reinstatement, but the same was refused, the finding of learned Labour Court that there was no demand by the petitioner Krishan Rai is wholly erroneous and perverse.

23. Learned counsel submitted that even if it is assumed that there was no specific demand for reinstatement by Krishna Rai, the relief for reinstatement cannot be refused on that ground.

24. Learned counsel submitted that the Industrial Disputes Act, 1947, nowhere contemplates that a dispute has to come into existence in any particular or specified or prescribed manner. For existence of a dispute, written demand, is not

a requirement. Learned counsel referred to and relied on a decision of the Supreme Court in Shambhu Nath Goyal Vs. Bank of Baroda Jullundur 1978(1) LLJ 484 (S.C).

25. Learned counsel contended that when the conciliation proceeding was jointly held and the reference was also made with respect to both the workmen on the same ground, there is no justification for denying any relief to the petitioner Krishna Rai by mechanically holding that there was no demand on his behalf.

26. Learned counsel submitted that when learned Labour Court has held that the termination of the workmen was wholly illegal and unjustified and in violation of the provisions of the Industrial Disputes Act, both the petitioners should have been reinstated with full back wages. Learned Labour Court has erroneously refused the said relief to the petitioners.

27. Learned counsel urged that if the services of an employee are terminated in violation of Section 25F of the Industrial Disputes Act, the order of termination is rendered ab initio void and the employee becomes entitled to the continuity of service with his back wages. Learned counsel referred to and relied on a decision of the Supreme Court in Narotam Chopra Vs. Presiding Officer, Labour Court and Others, .

28. Learned counsel relied on another decision of the Supreme Court in Vikramaditya Pandey Vs. Industrial Tribunal, Lucknow & Anr. (2001) 2 SCC 423 and submitted that even in the said case, the Apex Court has held that once the termination of service of an employee is held to be wrong or illegal, the normal relief, the concerned workman is entitled to, is reinstatement with full back wages, particularly, when there is no pleading of any special circumstance warranting either non-reinstatement or non-payment of back wages.

29. Learned counsel contended that the impugned award has been rendered without taking into consideration the said settled principles of law and the same is contrary to the provisions of law, so far as the refusal of the relief to the petitioner Krishan Rai and the refusal of the relief of reinstatement and back wages to the petitioner Ramesh Chandra Mishra are concerned.

30. Learned counsel submitted that there is apparent error on the face of the impugned award, as the same is contrary to the provisions of the Industrial Disputes Act and the aforesaid law laid down by the Hon"ble Supreme Court. He submitted that the part of the impugned award whereby the relief to the petitioner Krishna Rai is refused, is bad and is liable to be quashed.

31. The writ petition has been contested by the respondents stating, inter alia, that learned Labour Court has considered all the relevant aspects and has found that the appointments of the petitioners were not made in accordance with Section 35 of the Bihar University Act, 1976. The appointments of the concerned workmen were made by the Principal of the college, who had no jurisdiction. It has been submitted that learned Labour Court has considered the said inherent

infirmity in the appointments of the concerned workmen and though learned Labour "Court has held that the termination of the services of the concerned workmen was not justified and is in violation of Section 25F of the I. D. Act. he has rightly not allowed any relief to the petitioner Krishna Rai on the ground that he had never made any demand for his reinstatement before the respondents and in respect of Ramesh Chandra Mishra, learned Labour Court has rightly refused his prayer for reinstatement on the aforesaid ground.

32. Mr. A. K. Mehta, learned counsel appearing on behalf of the respondents, submitted that the petitioners were initially appointed by the Principal of the college, who had no jurisdiction to make such appointment. The order of the then Vice Chancellor regularizing the petitioners and others was in gross violation of the provisions of the Bihar State University Act, 1976. That order of the Vice Chancellor was subsequently cancelled by the University on 2.12.1990. The concerned workmen, thus, did not derive any legitimate right on the basis of the order of regularization and subsequently by the letter issued by the Principal of the college.

33. Learned counsel submitted that even if it is assumed that the termination of the petitioners was illegal in view of Section 25F of the Industrial Disputes Act, they are not entitled for reinstatement on the ground that their appointments were made in contravention of the provisions of Section 35 of the Bihar University Act, 1976 in view of the decision of a Division Bench of the Patna High Court in Sukh Sagar Prasad and Others Vs. The State of Bihar and Others . In the said decision, it has been clearly held that the appointments made in contravention of the provisions of Section 35 of the Bihar University Act are illegal.

34. Learned counsel submitted that in view thereof, even if the termination of the petitioners is bad, they are not entitled to be reinstated in service. Learned Labour Court has rightly refused the said prayer.

35. I have heard learned counsel for the parties and carefully considered their respective contentions. I also perused the facts and materials on record.

36. It is pertinent to mention here that the respondents have not challenged the impugned award. Learned Labour Court having considered the facts and evidences on record has come to the following findings: (i) The termination of services of the concerned workmen is not justified and the termination is illegal and is in violation of Section 25F of the I. D. Act. (ii) The concerned workmen, however, were found appointed by the authority contrary to the provisions of Section 35 of the Bihar University Act, 1976. (iii) But, admittedly, the concerned workmen were employed and working on the respective posts, hence they are entitled for their wages along with notice pay and retrenchment compensation, (iv) Since the petitioner Krishna Roy had not made any demand, the reference with respect to Krishna Roy is bad and is not maintainable and he is not entitled to any relief.

37. From the said findings, which have not been challenged by the respondents, it is much clear that the termination of the concerned women is illegal and unjustified. In the case of *Narotam Chopra, supra*, the Hon"ble Supreme Court relying on its earlier decision in *Gammon India Limited Vs. Niranjana Dass*, reiterated and held that it is now well settled that if the services of an employee are terminated in violation of Section 25F of the I. D. Act, 1947 and the order of termination is rendered ab initio void, the employee would be entitled to continuity of service along with back wages.

38. Almost similar view has been taken by the Apex Court in the case of *Vikramaditya Pandey, supra*.

39. In view of the said clear law laid down by the Hon"ble Apex Court and in view of the unchallenged finding of learned Labour Court that the retrenchment of the concerned workmen was unjustified, illegal and in violation of Section 25F of the I. D. Act, it must be held that since the termination order is rendered ab initio void, the petitioners are entitled to be reinstated with continuity of their services.

40. Learned Labour Court ignoring the said law laid down by the Supreme Court has erroneously denied the said relief to the petitioners on extraneous ground.

41. Learned Labour Court denied the relief to Krishna Rai only on the ground that there was no demand of reinstatement by Krishna Rai and as such the reference regarding him is not maintainable and he is not entitled to any relief. The said finding of learned Labour Court is in direct conflict with the law laid down by the Supreme Court in the case of *Shambhu Nath Goyal, supra*. In the said case, it has been clearly held that the I. D. Act nowhere contemplates that a dispute would come into existence in any particular or specified or prescribed manner. It has been further held that for coming into existence of an industrial dispute, a written demand is not a sine qua non unless of course in the case of a public utility service, because Section 22 forbids going on strike without giving a strike notice.

42. It is clear that this case does not attract Section 22 of the Industrial Disputes Act. The Apex Court has further held that to read into the definition of "industrial dispute", the requirement of a written demand for bringing into existence an industrial dispute would tantamount to re-writing the Section.

43. In view of the said settled principle of law, refusal of relief to the petitioner Krishna Rai on the ground of not making a demand is wholly perverse and illegal.

44. Similarly, refusal of reinstatement of the petitioner Ramesh Chandra Mishra on the ground that he was appointed by the authority having no jurisdiction and the same is against the provisions of Section 35 of the Bihar University Act, 1976, is wholly misdirected and erroneous.

45. Section 35 of the Jharkhand State University Act, 2000 (Section 35 of the Bihar State University Act, 1976) has been heavily relied upon by the

respondents for refusing the petitioners" prayer for reinstatement, reads as follows:

"35. No post for appointment shall be created without the prior sanction of the State Government-(1) Notwithstanding anything contained in this Act, no University or any College affiliated to such University, except such College-

(a) as is established, maintained or governed by the State Government; or

(b) as is established by a religious or linguistic minority;

(i) after the commencement of this Act, no teaching or non-teaching post involving financial liability shall be created without the prior approval of the State Government;

(ii) shall either increase the pay or allowances attached to any post, or sanction any new allowance :

Provided that the State Government may, by an order, revise the pay-scale attached to such post or sanction any new allowance.

(iii) shall sanction any special pay or allowance or other remuneration of any kind including ex-gratia payment or any other benefits having financial implication to any person holding a teaching or non-teaching post;

(iv) shall incur expenditure of any kind on any development scheme without the prior approval of the State Government.

(2) Notwithstanding anything contained in this Act, no College other than one mentioned in clauses (a) and (b) of subsection (1), shall, after the commencement of this Act, appoint any person to any post without the prior approval of the State Government:

Provided that the approval of the State Government shall not be necessary for filling up a sanctioned post of a teacher, for a period not exceeding six months, by a candidate possessing the prescribed qualifications.

(3) Any appointment or promotion made contrary to the provisions of this Act, or Statutes, Rules or Regulations made thereunder or made in irregular or unauthorized manner shall be invalid and shall be terminated at any time. The expenditure incurred by the University against such appointment or promotion shall be realized from the officer making such appointment or promotion as a public demand under the provisions of the Public Demands Recovery Act, 1914."

46. In the instant case, no document has been produced on behalf of the respondents to show that the posts, on which the petitioners were appointed, were created without prior sanction of the State Government. On the contrary, it is evident from the documents produced by the concerned workmen that their regularization were made by the order of the University after observing the legal formalities of selection by the Interview Board constituted at the high level. After selection, the Registrar of the University communicated the Principal of the said

college by Letter No. ARU/V.C/4268-69 dated 6.5.1990 regarding the selection and regularization of the services of the petitioner along with others as per the staffing pattern (Annexure-3). The Principal, thereafter, on the basis of the said request and appointment by the Vice Chancellor, had issued the letter dated 29.5.1990 (Annexure-4) to the petitioners regarding their regularization.

47. Once the petitioners were duly regularized and appointed, they acquired valuable right to the posts. Their services cannot be terminated arbitrarily without following the due procedures prescribed by law.

48. In the instant case, the University did not even issue termination letter. Rather the petitioners were arbitrarily and orally stopped from working, without giving any notice informing the reasons or opportunity to meet the same.

49. Preventing the petitioners from discharging their duties, was wholly arbitrary illegal, unjust and is violative of Articles 14, 16 & 21 of the Constitution of India, apart from violation of Section 25F of the I. D. Act.

50. Learned Labour Court failed to take into consideration the said well settled legal principles and even after arriving at the finding that the termination was unjust and illegal, seriously erred in refusing the petitioners' reinstatement.

51. Learned Labour Court has, thus, committed serious error of law, which is apparent on the face of the impugned award.

52. In view of the above facts and findings, there is no relevance of the decision in Sukh Sagar Prasad, supra, referred to by learned counsel for the respondents.

53. For the reasons aforesaid, these writ petitions are allowed. The respondents are directed to reinstate the petitioners. The parts of the impugned award refusing relief to the petitioner Krishna Rai as also refusing relief of reinstatement to the petitioner Ramesh Chandra Mishra, are quashed. Since learned Labour Court has already awarded wages along with notice pay and retrenchment compensation, which has not been challenged by the respondents, the petitioners shall be reinstated with payment of the wages and the said benefits. The respondents shall issue appropriate order to that effect within four weeks from the date of receipt / production of a copy of this order. The respondents shall pay the arrears / other benefits awarded by learned Labour Court within three months from the date of receipt / production of a copy of this order. However, there is no order as to costs.